

Application No. 10/573,905
Atry. Docket No. WP03-1A04-US
4/24/2009

REMARKS

According to the Office Action mailed November 24, 2008, claims 1, 37-45, and 47-69 are pending in the current application. Claims 1, 37-38, 40, 49-55, 57-66, 68 and 69 have been withdrawn and currently claims 39, 41-45, 47, 48, 56 and 67 are rejected. By this amendment Applicants have: (1) canceled claims 42-45, 47 and 48 without prejudice; (2) amended claim 39 to delete the term "prevent," and the phrase "is optionally chemically modified or mutated;" and (3) amended claim 39 to add "is chemically modified at one or more lysine residues or the N-terminal amino group, wherein said chemical modification is carbamylation," which incorporates the limitations of claims 42 and 47; and (4) amended claim 56 to depend from claim 39 and provide proper antecedent basis for the claim.

Applicants hereby reserve the right to pursue the subject matter of the canceled claims in subsequent filings. These amendments have not added new matter, and Claims 39, 41, 56 and 67 will be pending upon entry of the present amendment.

INFORMATION DISCLOSURE STATEMENT

Applicants acknowledge the Examiner's indication that the various references submitted in Applicant's IDS filed on July 29, 2008 was received and the information contained therein was considered as to the merits. However, although the Office Action, pages 3-4, indicates that the Office Actions and patent interference cited in the IDS were considered, the Examiner has lined through each of these references on the IDS, see pages 4 and 7, indicating that the references have not been considered. Applicants hereby request that the IDS be amended in order to indicate that these submitted references have in fact been considered by the Examiner as the Office Action states.

THE CLAIM REJECTIONS UNDER 35 U.S.C. § 112, FIRST PARAGRAPH, ENABLEMENT, SHOULD BE WITHDRAWN

Claims 39, 41-45, 47, 48, 56 and 67 have been rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. The Examiner maintains that these claims are not enabled for a method of *preventing* adhesion formation, abnormal fibrous band formation, formation of a connection between organs or scarring in a mammal using an *unmodified EPO that is optionally chemically modified or mutated*. Without agreeing to the Examiner's rejection and solely to expedite the prosecution of this application, Applicants have (1) amended claim 39 to delete the term "prevent," and the phrase "is

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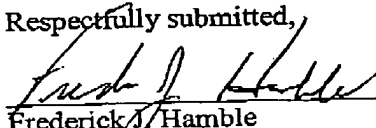
optionally chemically modified or mutated;" and (2) amended claim 39 to add "is chemically modified at one or more lysine residues or the N-terminal amino group, wherein said chemical modification is carbamylation." These amendments render the current enablement rejection moot as the Examiner, page 4 of the Office Action, indicates that the specification is enabling for the amended scope of claim 39.

Dependent claims 41, 56 and 67 all ultimately depend from claim 39 and incorporate the limitations of claim 39 via their dependencies and therefore are enabled as well. Accordingly, Applicants assert that the specification is enabling for the claimed invention and that the indicated claims should be allowed.

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CONCLUSION

Applicants respectfully request consideration and entry of the amendments and remarks into the file for the above-identified application.

Respectfully submitted,
Date: April 24, 2009  42,623
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